No. 11,638

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND ALLIED WORKERS OF AMERICA, JEFF KIBRE, GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R. SMITH, GEORGE KNOWLTON, OTIS W. SAWYER, W. B. MCCOMAS, HARRY A. MCKITTRICK, ARTHUR D. HILL, C. LLOYD MUNSON, CHARLES MCLAUCHLAN, ROBERT M. PHELPS, BURT D. LACKYARD, and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' REPLY BRIEF.

GLADSTEIN, ANDERSEN, RESNER AND SAWYER,
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APPELLANTS' REPLY BRIEF.

It will be recalled that the sole objective of these appellants was to be guaranteed that the market price of fish would not drop while they were out to sea. They were not seeking a "closed shop" and the price agreed upon could be renegotiated at any time before they set out on another voyage, a so-called "trip by trip" basis (App. F, p. 13, Appellants' Op. Br.).

The appellants contended then. and do now, that such an objective was lawful. The fish buyers' only objection was that it might be declared unlawful. It remains for the Court to finally resolve this issue.

POINT ONE.

The Government's Case Was Based Upon Misconceptions of Fact and Law, Some of Which Have Now Been Conceded in the Government's Reply Brief.

A. Appellants Were Not in a Vertical Combination of Owners and Workers.

It is now apparent even to the Government that this indictment was based on a serious misconception of the facts.

Paragraph 5 of the indictment alleged that the term "fishermen" meant boat-owners and in the Government's opening statement, it was declared that the appellant association was composed "principally" of boat owners [Tr. 127].

Since the Anti-trust Division had been rebuffed just four years previously by the United States District Court for Oregon in an effort to prosecute another local of the appellant international fishermen's union, a new theory was necessary. The mistaken belief that this local was composed principally of boat owners furnished this new basis for renewed prosecution.

The charge of boat ownership here was similar to the plaintiff's allegations in the complaint filed in *Hawaiian Tuna Packers, Ltd. v. Int. L. & W. Union,* 72 Fed. Supp. 562 (July 15, 1947), in which the Court said at page 567:

> "But it is said by defendants that these boatowners to which plaintiff has reference are also fishermen. That is some of the 'some boatowners' are owners who fish as members of the crew, receive shares of the proceeds as crewmen, as well as retain the owner's share. That may be, and it may upon trial develop that they are in Local 150 as crewmen or fishermen

> rather than in their capacity as boatowners. But at the moment all that is known is what is alleged, namely that union crew members have combined with some of their employers to effect their purpose. Such an allegation as against the motion must be taken as true and it brings the case within the Allen Bradley decision."

In this case, the precise facts DID develop at the trial. Instead of a union of boat owners as charged in the indictment, the government's contention has now dwindled to saying that "many of the fishermen members of the association, as well as many non-member fishermen, owned and operated their own boats" (Govt. Rep. Br. p. 7). Government's Exhibit 13 showed that the union admitted working fishermen only to membership and appellants' testimony to this effect was never controverted (Appellants' Op. Br. p. 7).

Thus the appellants' combination was a *horizontal* one, composed of men in the same phase of production.

In the *Hawaiian* case (*supra*), the Court granted a preliminary injunction upon the naked allegations of the complaint that the combination there was a *vertical* one of boat owners and worker-employees. The Court assumed that if the combination was vertical and that if a labor union was involved, then *Allen Bradley v. Local Union No. 3*, 325 U. S. 797 applied, or if a cooperative was involved, then *U. S. v. Borden Co.*, 308 U. S. 188 applied.

Appellants concede the force of these two cases. But they are both directed at *vertical* combinations. If either a labor or farmer group joins with employers, middlemen, or others, they have lost the exclusive characteristic which entitle them to exemption from the Sherman Act. But that is not the situation in the case at bar.

B. Appellants' Simple Bargaining Methods Are Legal.

At pages 35 and 53 of its reply brief, the Government apparently contends that the Clayton Act did not give farmers any rights to organize horizontally and market their products collectively. The Government's position here is that the Capper-Volstead Act of 1922 and the Fishermen's Marketing Act of 1934 were necessary to permit this.

The facts and law are exactly to the contrary. The Clayton Act permitted only *horizontal* combination at the production level. The later acts were passed to permit farmers and fishermen, acting through combinations limited to original producers, if they desired, to ascend *vertically* higher into the distributive process. That is, producers were allowed to combine, and in such combination, to engage in the distributive process.

The true reasons for the later acts are stated in Professor John Hanna's recent article on "Anti-trust Immunities of Cooperative Associations," 13 Law and Contemporary Problems (Duke Univ., Summer 1948) page 488 at 498:

> "Since the Clayton Act is not specific as to what are agricultural or horticultural associations, and since its immunity does not extend to cooperatives having capital shares, although a true cooperative may have capital shares and many of the older cooperatives were so organized, the Capper-Volstead Act was passed in 1922 *to clarify the cooperative exemptions.* Cooperatives may be corporate or other forms of association with or without share capital. Producers include farmers, planters, ranchmen, dairymen, and nut and fruit growers. Associations may engage in processing, preparing for market, and

handling and marketing products of members in interstate and foreign commerce. They may have marketing agencies in common. Several requirements are enumerated, including the one-man-one-vote principle, limitation of dividends on share capital to 8 per cent, and no dealing in products of non-members to an amount greater in value than for members." (Emphasis supplied.)

However, here the appellants never chose to ascend the vertical ladder even though they could have done so within the limitations of the Fishermen's Marketing Act.

Paradoxically, at the trial the Government argued that appellants were not a cooperative unless they did more than merely bargain for future prices of fish to be caught by their members.

For example, when appellants' proposed instruction No. S-12 [Tr. 59] was being argued, Mr. Rubin, one of the Government's attorneys, said [Tr. 1859]:

> "They are going to argue that this is just a marketing agency *and we are going to have to say that they must do more than fix the price at which their members will individually sell to the dealers.* That will be the argument made before the jury." (Emphasis supplied.)

This was followed by this statement [Tr. 1860] by Mr. Dixon, counsel for appellee herein:

> *"We feel that if they don't sell anything, or act as a sales agent for any of their members in selling anything, that they are not a cooperative."* (Emphasis supplied.)

However, in at least one section of the Government's Brief, this absurd position has now been abandoned by the

Government, and appellants gratefully acknowledge the following concession:

> "It is not disputed by the Government that an association properly organized and functioning under the Fishermen's Marketing Act may enter into contracts with individual dealers which provide for the price at which the products of the association or its members may be sold." (Govt. Rep. Br. 37.)

In other words (although the reply brief is far from clear in this point), it is now apparently all right with the Government if the appellants merely operate *horizontally* as a simple bargaining agent.

C. Appellants' Objective Was Limited to an "Open Shop" Contract and Was Therefore Legal.

It is the Government's contention that the instructions given by the Court with respect to the Fishermen's Marketing Act are supported by *Columbia River Packers Assn. v. Hinton,* 315 U. S. 143. Completely overlooked is the fact that that case does not deal at all with collective bargaining concerning prices. In that very case it is pointed out that the union was acting as the collective bargaining agent for the sale of fish caught by its members, and this activity is not condemned, directly or indirectly. Rather, it is the exclusion of fishermen from the market and only this that is dealt with by the Court. So, too, it was the closed shop provision of the agreement and only that which the trial court considered illegal. The trial court in that case pointed out that the power to combine *for other purposes* gave the defendants ample protection.

> "Having organized the fishermen ninety per cent, the defendant union has a great power in its hands. Such control, approaching a complete monopoly in

> the production of one of life's necessities, calls for reasonableness and moderation in the exercise of the power. I am certain that with so complete an organization, the fishermen will find that the powers granted by the Federal cooperative statutes are ample to protect their markets." (34 Fed. Supp. 970, 977.)

Of course, that decision is expressly not applicable to the case at bar. Here the appellants had expressly relied upon a later decision by the same Court in which Judge McCullough had approved an "open shop" combination. There the Court dismissed the Government's indictment declaring that the practice of group bargaining in the fishing industry was a "satisfactory" one. (*United States v. Columbia River Fishermen's Protective Assn.,* No. C-16087 (1943), Appellants' Op. Br. 43.)

The contracts sought to be obtained in this case were thus of an "open shop" character and no contention to the contrary is made by the Government, although an instruction to this effect, S-18, was refused by the Court as not having "any place in the case" and "immaterial" [Tr. 1827].

D. The Sherman Act Is Not Concerned With the Means Employed by the Appellants.

The issue in this case is thus narrowed to what the Government calls "the real question" (Govt. Rep. Br. p. 36), to-wit: Does a *horizontal* combination of food producers violate the Sherman Act if it employs coercive methods in order to get a minimum price contract?

The proposition stated in the court's instructions and supported by the Government that a fishermen's association may enter into a price-fixing contract but that it may

not "force" such a contract "on non-assenting dealers by coercive methods and tactics" (Govt. Br. p. 39) is untenable. What is meant by "coercive methods and tactics"? Is the withholding of a product by a combination a coercive method and tactic? In every transaction parties use their economic power to obtain the best possible terms. A trade union uses such power when it strikes. That does not render the agreement in settlement of the strike illegal under the anti-trust laws, even if there were unlawful acts of "coercion" in the course of the strike, which acts of coercion actually interfered with the free flow of goods in interstate commerce. The reason for this rule is that so long as the objective of the trade union is a valid one, the methods used whether legal or illegal are not limited by the Sherman Act.

In *United States v. Bay Area Painters and Decorators Joint Committee, Inc., et al.,* 49 Fed. Supp. 733 (1943), the Court said:

> "The unions must necessarily negotiate and bargain collectively with the employers. It would seem beyond belief that Congress intended to protect the machinery used by labor to enable it to negotiate and bargain collectively for terms and conditions of employment and then, after it completes its negotiations and has made its bargain through agreement with the employers, to withdraw that protection and leave the parties to the agreement liable for prosecution for criminal conspiracy. Such a construction would vitiate the effect of the Clayton and Norris-La Guardia Acts, for such agreements almost always have some effect on interstate commerce, if only to raise prices by increase in wages or decrease in hours of work."

Coercive methods are not a violation of the anit-trust laws. Even if an agreement were obtained at the point of a gun, its validity *under the anti-trust laws* would depend solely upon the terms of agreement finally reached and whether such terms illegally restrained commerce. And if the agreement did illegally restrain commerce, the violation of the anti-trust laws would be no less if all the parties to the agreement had entered into it without the slightest semblance of pressure from anyone. The error in the court's instructions and the rulings on the admissibility of evidence with respect to picketing and other activities arose out of a failure to recognize these principles.

The Government concedes that a horizontal combination of employees in a labor union may legally employ such coercive tactics.

> "Picketing and boycotting activities by labor union members would probably be legal if pursued in connection with the carrying out of a legitimate labor union objective." (Govt. Rep. Br. p. 48.)

This was not always the law. The Danburry hatters lost their homes and their livelihoods in 1907 after the decision in *Lawlor v. Loewe*, 234 U. S. 522. The decisions in 1921 of *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, and in 1927 of *Bedford Cut Stone Co. v. Journeyman Stonecutters*, 274 U. S. 37, directly brought about the Norris-LaGuardia Act of 1932.

The significance of the Supreme Court's subsequent decisions in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, and *United States v. Hutcheson*, 312 U. S. 219, seems to have completely escaped Government counsel in this case.

In this case the Government continues to cite as authority the *Duplex* and *Bedford Cut Stone* cases just as if

Mr. Justice Frankfurter had never said of them in *United States v. Hutcheson (supra):*

> "There is no profit in discussing those cases under the Clayton Act which were decided before the Courts were furnished the light shed by the Norris-LaGuardia Act on the nature of the industrial conflict." (P. 236.)

The point that the Government misses is that the Supreme Court's new interpretation of the Sherman Act since 1939 is that it is not designed to police any kind of tactics, even violence, such acts being held to be the concern of State law alone. The Supreme Court has directed a Federal "hands off" policy on *tactics,* no matter what *kind* of a group or individual engages in them.

The case of *Swift & Co. v. United States,* 196 U. S. 375, 396, relied upon by the Government actually supports the appellants. In that case, it was held that even though each individual act in a conspiracy is lawful, "the plan may make the parts unlawful." Here, whether the picketing and other activities engaged in by the defendants were in violation of the anti-trust act depends upon the "plan" which the said activities were calculated to promote. If the plan, that is, achieving a price-fixing contract or working out an arrangement whereby the individual fisherman could determine the price of his catch in advance of the fishing trip violated the anti-trust laws, then picketing and other activities utilized to forward the plan were unlawful. If the attainment of the objectives sought was legal, then the picketing and other activities were not in violation of

the anti-trust laws, whether or not such activities were otherwise unlawful.

The Supreme Court's present day position is that the Sherman Act is only concerned with illegal *ends*. If the ends are legal, no Federal power exists to prevent their attainment by illegal *means*, even though those acts are punishable by State law. (See Appellants' Op. Br. pp. 124-127.)

Therefore, the Government is no longer able successfully to contend under present day decisions that the *means* employed by the appellants were a violation of the Sherman Act. What Government counsel is trying to do, unwittingly, we trust, is to get the assistance of this Court in turning back the clock and to return the Federal judiciary to the business of policing coercive tactics *per se*.

Throughout its brief, the Government argues that there is a difference between the rights of a labor union and an association of producers under the Clayton Act. Just *what* the nature of that alleged difference is and *why* it exists is left a mystery. The Sherman Act and the other statutes dealing with the subject of monopolies and restraint of trade were not designed to establish technical procedural distinctions between and among organizations and their activities. These laws were enacted to deal with basic economic problems. Organizations composed of certain economic groups were evil, in the belief of Congress, if they tended to become monopolistic or to fix prices. On the other hand combinations which strengthened bargain-

ing power and set prices for original producers or established wages were believed to be in the public interest. No argument based on some technicality should be allowed to conceal these fundamental facts. That is why Judge McCullough, the trial judge who was sustained by the Supreme Court in the *Hinton* case, *supra,* ruled that a fishermen's group organized as a labor union was entitled to the protection of the Fishermen's Marketing Act. (*Columbia River Packers Assn. v. Hinton,* 34 Fed. Supp. 970, *supra,* and *United States v. Columbia River Fishermen's Co-operative Assn., Inc.* (see Opening Brief, pp. 43-48).)

Summarizing, appellants say:

1. This is not an illegal *vertical* combination prohibited by the *Allen Bradley* and *Borden* case.

2. The simple bargaining practices of the *horizontally* combined appellants are legal.

3. The end sought was not the closed shop declared illegal in the *Hinton* case.

4. The tactics employed by appellants to gain these legal ends are not a matter of Federal concern under the Sherman Act.

Nothing other than the above need be decided in this case.

POINT TWO.

Appellants' Defenses Need Not Be Considered in View of the Government's Failure to Present an Affirmative Case. Nevertheless, These Defenses Would Constitute an Absolute Bar to This Prosecution.

A. The Exemptions of the Clayton Act Apply to Appellants and That Act Makes No Distinctions Between Laborers and Farmers.

This Court need not concern itself with the perplexities raised by the Government in harmonizing the labor and farmer exemptions found in Section 6 of the Clayton Act. Such bothersome distinctions did not trouble the original legislative draftsman. (See Senate Report quoted at Appellants' Op. Br. 60.)

At page A 1636, Congressional Record, 80th Cong., April 8, 1947, there is to be found the following language from a speech by William M. Leiserson, of John Hopkins:

> "But not only labor unions, farmers' organizations, too, are exempted from anti-trust laws. Unquestionably, unions are combinations to restrict competition among workers, to raise and standardize wages and working conditions through whole industries; and farmers organize to standardize products and raise prices. In fact the Government lends money to combinations of farmers to help them withhold their products until they can get the prices they want. These Government policies with respect to labor and agriculture were established by law to deal with economic and social evils brought on by competition among farmers and workers, just as the anti-trust laws were directed against the evils of business monopolies. To say they are special licenses to violate the law and to compel wage earners (or farmers) to compete and

underbid each other is to ignore history and the progress that has been made since the combination laws of Adam Smith's days."

The two groups were also lumped together by Mr. Justice Frankfurter in *Tigner v. Texas,* 310 U. S. 141, when he said:

> "Those who labored with their hands and those who worked the soil were as a matter of economic fact in a different relation to the community from that occupied by industrial combinations." (P. 145.)

B. The Exemptions of the Clayton Act Differ From the Norris-La Guardia Act in That an Employer-Employee Relationship Is Not a Necessary Ingredient.

The employee-independent contractor problem also need not vex the Court in this case because no injunctive relief is sought and the Norris-La Guardia Act is not involved except as Justice Frankfurter used it as a Congressional construction of the Clayton Act in *United States v. Hutcheson,* 312 U. S. 219, 236. Should, however, the Court address itself to this problem, appellants think it imperative that the Court examine a recent brilliant article in which the fisherman's economic status is extensively discussed, "Restraint of Trade—Employees or Enterprises," 15 Chicago Law Rev. 638 (Spring 1948).

The case of *Hopkins v. United States,* 171 U. S. 57, relied upon by appellants is cavalierly thurst aside on the ground that it involves the sale of services—the very ground for which it was cited in the Opening Brief. In that case, decided even before the Clayton Act exemption was enacted, the Court looked through the surface technical relationships of independent businessmen, or "commission merchants," as they were referred to in the opinion,

and held that in reality services were being sold and that services were not covered by the Sherman Act. We are asking this Court in an even clearer situation to follow the same principle.

The Government cites *American Medical Assn. v. United States,* 317 U. S. 519, as laying down a different rule. That case involved a health insurance business and a conspiracy to prevent it from doing business There was no question of the right to set prices for medical services; rather the problem was one of excluding the association from the market place, incidentally the same problem as was involved in *Columbia River Packers Assn. v. Hinton,* 315 U. S. 143, and *Manaka v. Monterey Sardine Industries,* 41 Fed. Supp. 53, relied upon by the Government.

Most important is the fact that the Clayton Act is not limited to situations where an employer-employee relationship exists or where the transaction involves services only; it includes original producers as well as workers for wages.

C. Appellants Were Economically Justified so Long as They Were Not Fixing Consumer Prices.

Although the Government makes the curious objection to expert testimony that it is the "conclusions of the witness" (Govt. Rep. Br. p. 62), appellants nevertheless commend to the Court's attention Exhibit (for identification) TT. This is the proffered testimony of Dr. John B. Schneider (summarized at pp. 28-33, Appellants' Op. Br.) who, since the trial, has become manager of the California Prune Marketing Program.

Economic justification is not necessary to be shown where there is an express statutory exemption under the Clayton Act, but this and similarly proffered testimony

(App. G, p. 16, Appellants' Op. Br.) will be useful in furnishing this Court a complete picture of the economic situation existing today in the fresh fish industry.

The rule in the case of *United States v. Socony-Vacuum,* 310 U. S. 150, making consumer-market price fixing illegal *per se,* marks an important advance in the public's protection and appellants are as much in favor of it as the Government. It simply is not involved in this case; first, because the Clayton Act and the Fishermen's Marketing Act permit the appellants to fix their prices, and second, even if the exemption was not applicable, the prices fixed by appellants do not affect prices to the consumer but only the middleman's margin of profit. (See *Appalachian Coal v. United States,* 288 U. S. 344 (Appellants' Op. Br. pp. 97-109) and Dr. Schneider's testimony (Appellants' Op. Br. p. 32).)

The Government seeks to distinguish the *Appalachian Coal* case from the *Socony-Vacuum* case on the basis that the latter is a price-fixing case and the former is not. In a basic sense, which the Government has failed to recognize, this distinction is sound. In the former case there was no price fixing directly affecting consumer prices; in the latter there was such price fixing. It is this that rendered one illegal and the other not. In both cases, however, there was fixing of prices at intermediate levels.

In the *Socony-Vacuum* case, prices were fixed through the means of buying up gasoline so as to artificially raise the price to the consumer.

> "As a result of these buying programs it was hoped and intended that both the tank car and the retail markets would improve. The conclusion is irresistible that defendants' purpose was not merely to raise the spot market prices but, as the real and ultimate end,

to raise the price of gasoline in their sales to jobbers and consumers in the Mid-Western area." (310 U. S. 150, 190.)

Whereas in the *Socony-Vacuum* case, prices were fixed indirectly through a buying program, in the *Appalachian Coal* case the combination acted directly as a sales agency and, as the court said, "prices are to be fixed by the officers of the company at its central office." The fact is that in the *Appalachian Coal* case price fixing is involved, but, to use the language of the cited case, there was no "power to dominate or fix the price of coal in the consuming market." That power existed in the *Socony-Vacuum* case and, therefore, the *per se* rule applied. It is on this very basis that the Court in the latter case distinguished the *Appalachian Coal* case, 310 U. S. 215, 216.

Finally, in *Allen Bradley Co. v. Local Union No. 3, I. B. E. W.*, 325 U. S. 797, the Court noted that when the Sherman Act was adopted there were two views as to its purpose, one being that the Act was aimed at "high consumer prices achieved through combinations looking to control of markets by powerful groups." The second view was that the Act applied to all combinations which interrupted the free flow of trade or tended to create monopolies. Initially the latter view was accepted. However, this met with vigorous opposition, leading to the adoption of the Clayton Act and the Norris-LaGuardia Act, until finally the Court in the *Allen Bradley* case said:

> "We said in *Apex Hosiery Co. v. Leader, supra,* 448, that labor unions are still subject to the Sherman Act to 'some extent not defined.' The opinion in that case, however, went on to explain that the Sherman Act 'was enacted in the era of "trusts" and of "combinations" of businesses and of capital organized and directed to control of the market by suppression of

competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern'; that its purpose was to protect consumers from monopoly prices, and not to serve as a comprehensive code to regulate and police all kinds and types of interruptions and obstructions to the flow of trade. This was a recognition of the fact that Congress had accepted the arguments made continuously since 1890 by groups opposing application of the Sherman Act to unions. It was an interpretation commanded by a fair consideration of the full history of Anti-trust and labor legislation." (325 U. S. 806.)

D. The Jury Questions Should Also Be Resolved in Appellants' Favor.

In the interests of an improved administration of justice in District Courts of the United States this appeal should not only be resolved in favor of the appellants on the merits but also upon the jury questions argued in Appellants' Opening Brief, pages 148-195.

Much that is contained in the Government's Reply Brief (pp. 71-89) on this point consists of the erection and destruction of straw men. In the present case, a method of selection of proposed jurors was purposefully and intentionally used. The only issue is whether that method of selection was proper.

The Government, relying on the case of *Fay v. New York,* 332 U. S. 261, goes to great lengths to prove that the appellants were not injured by the method of jury selection. This argument entirely overlooks the fact that in a Federal case, prejudice is immaterial. *Thiel v. So. Pacific Ry. Co.,* 328 U. S. 217, 225, and *Ballard v. United States,* 329 U. S. 186. Furthermore, appellants were organized into a CIO union and engaged in strike activities.

Can it be doubted that the attitude of those in the lower economic classifications is generally more favorable to such groups and activities than is the attitude of those in higher economic classifications?

The case of *Thiel v. So. Pacific Ry. Co.,* 169 F. 2d 30, 32, is relied upon by the Government as establishing that a system of selection such as was used in the instant case is a proper one. There, it appears that the sources used were "telephone books, city directories and the like." That is a far cry from the situation here. Between 1943 and 1947, a typical period for which there was complete information as to the sources used for the selection of jurors, over 25% of the names selected came from social registers and country and social clubs. This is only one striking example of a deliberate system of selective selection which differentiates this case from any relied upon by the Government.

The Government's heavy dependence on the *Fay* case, *supra,* indicates the weakness rather than the strength of its position. That case is one in which a violation of the Fourteenth Amendment had to be established—the appeal being from a decision of a State Court. Here, the Court is asked to exercise its "power of supervision over the administration of justice in the Federal courts." Here, a reversal is required if the approval of the system used "would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged." (*Thiel v. So. Pacific Ry. Co.,* 328 U. S. 217, 224-225.) The system here used did give a special place to the "economically and socially privileged." For that reason, as well as the others cited in the appellants' opening brief, the method of jury selection here utilized should stand condemned.

Conclusion.

On the decision in this case hinges the economic future of an important Pacific Coast industry. Only the guidance of this Court can restore stability and certainly to an industry which, properly encouraged, can furnish employment to thousands and food for millions of people.

Unless this clear guidance is given, the fresh fish industry will remain an archaic one. (Testimony at the trial revealed that while the national annual consumption of fish is 14 pounds per person, the average in Southern California is only 7 pounds, despite the fact that the world's greatest marine resources are at our doors [Tr. 1314].

The fresh fishing industry's chance to become aggressive and streamlined, to grow and bring added prosperity to the West, like the organized citrus, walnut and dairy industries, is now strangled by indecision. No one dares to move. The appellants did dare to move and for their pains are now branded as criminals.

The Government has assumed a serious responsibility to the economy of the Pacific Coast in attempting to slam the door on the joint activities of these appellants. It will be the duty of this Court to point the way out and, in the light of the appellants' experiences, only the most intrepid will follow the path unless the most explicit guidance is given.

Respectfully submitted,

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